IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 342 of 2004 (S/B)

Date of decision: 9th December, 2004

For the approval of:

Hon'ble Chief Justice V.S. Sirpurkar.

Hon'ble Mr. Justice Rajesh Tandon.

- Whether the order/judgment should be sent to the reporters for reporting? (yes)

- Whether the reporters be allowed to see the judgment?

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IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 342 of 2004 (S/B)

Dr. (Smt.) Mannu Dhondiyal,
W/o Sri L.P. Dhondiyal,
R/o B.D. Pandey Hospital Campus,
Mallital, Nainital. …… Petitioner

Versus

1. State of Uttaranchal through Principal Secretary,
   Department of Education,
   Uttaranchal Shasan, Dehradun.
2. State Public Service Commission,
   Uttaranchal, Haridwar,
   Through its Secretary. ……. Respondents

Mr. Manoj Tiwari, learned counsel on behalf of the petitioner.
Mr. B.D. Kandpal, learned Standing Counsel for respondent No. 2.

Coram: Hon. V.S. Sirpurkar, C.J.
Hon. Rajesh Tandon, J.

(Per Hon'ble the Chief Justice)

1. Heard Mr. Manoj Tiwari, learned counsel for the petitioner and Mr. B.D. Kandpal, learned Standing Counsel for respondent No. 2.

2. We do not think that this writ petition can be entertained. In this writ petition, the petitioner has claimed that persons with inferior merits have been called for interview for the posts for which she had applied in pursuance of an advertisement issued by the Public Service Commission.

3. The case of the petitioner is that though she was a better candidate and had better scholastic record, she was illegally avoided and she has not been called for interview, while some others, with inferior records, have been called. The petitioner also takes the exception to the 18 persons, who are being called and who are decidedly inferior to her. The further contention of the petitioner is that her other desired qualifications, like passing the NCC Examination etc., have not been taken into consideration. In short, the

contention in the writ petition is that the interview called have been given to a few privileged, chosen by the Public Service Commission, and in the process, discrimination has been effected.

4. A detailed counter affidavit has been filed on behalf of the Public Service Commission. The Public Service Commission has pointed out that there were, in all, 2 posts in general category and their criteria was to call 8 candidates per post of interview. So, in all, they desired to call 16 candidates for the two posts. The further contention raised is that considering the unusually high number of applicants for the posts, they devised a test to, firstly, shortlist the candidates to be called for the interview. In that, they devised a formula of assessing the academic merit of the candidates, for which, they took into consideration the score of a candidate at the intermediate examination, graduation examination and the post graduation examination. They devised the formula by taking into consideration all the three examinations by giving percentage of marks in the sense that for intermediate 20% of the total marks scored were to be given, for graduation 30% of the marks were to be given while for post graduation 50% of the marks were to be given and all these were to be added up so as to determine the average of the three examinations by which the general standard of the candidate could be arrived at. Then a list was prepared of all the candidates according to their individual score. It is pointed out that in such list, the petitioner was placed at serial No. 53 and as such, was not called for interview. It is pointed out that all the candidates above the petitioner had better score.

5. Mr. B.D. Kandpal, learned standing counsel for the Public Service Commission says that on that basis, the interview calls were sent. He is also candid enough to admit that because of the wrong reading of clause 15(4) of the Uttaranchal Higher Education (Group A) Service Rules, 2003, the calls were sent even to the “visiting lecturers” with lesser percentage, who had applied, however, that the calls sent to 18 such visiting lecturers are, now, cancelled.

6. In view of the statement made at the Bar and in view of the exercise having been explained to us, we are satisfied that no injustice has been caused and it cannot be said that 16 persons, to whom the interview calls have been sent, were, in any way, inferior to the petitioner.

7. Mr. Manoj Tiwari, learned counsel for the petitioner, then, points out that in the advertisement, it was provided that a screening test would be conducted if there were unusually high number of applicants. He relies on clause 5.9 of the said advertisement. We have seen that clause ourselves. It only provides that if the Public Service Commission "so feels", then, it may hold a screening test. It does no come in the way of Public Service Commission to evolve a formula to shortlist the candidates. We do not think that evolving a formula like the one, which has been done by the Public Service Commission is, in any manner, discriminatory.

8. Mr. Manoj Tiwari, learned counsel for the petitioner also took an exception on the fact that this formula has not been pleaded by the Comminssion in its counter affidavit. For that purpose, we specifically made a query to the learned standing counsel Mr. B.D. Kandpal, who is prepared to go on record in respect of this formula as also the list prepared on its basis.

9. In that view, we do not find that there is any case of discrimination, much less against the petitioner and the writ petition is liable to be dismissed. It is, accordingly, dismissed.

(Rajesh Tandon, J.) **(V.S. Sirpurkar, C.J.)**
09.12.2004 **09.12.2004**

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